

## 37 Am. Jur. 2d Fraud and Deceit § 87

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### Fraud and Deceit

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#### IV. False Representations

##### C. Matters of Futurity; Promises and Statements of Intention

###### 2. Promises and Statements of Intention

###### a. In General

## § 87. General rule of nonliability

[Topic Summary](#) [Correlation Table](#) [References](#)

### West's Key Number Digest

West's Key Number Digest, Fraud 0-12

### A.L.R. Library

[Employer's misrepresentation as to prospect, or duration of, employment as actionable fraud, 24 A.L.R.3d 1412](#)

Subject to certain exceptions and qualifications,<sup>1</sup> the general rule is that mere unfulfilled promises to do a particular thing in the future do not constitute fraud in and of themselves.<sup>2</sup> Thus, fraud cannot be predicated upon the mere nonperformance of a promise or contractual obligation,<sup>3</sup> or upon failure to fulfill an agreement to do something at a future time<sup>4</sup> or to make good subsequent conditions which have been assured.<sup>5</sup> Such nonperformance alone has frequently been held not even to constitute evidence of fraud.<sup>6</sup>

#### Observation:

Reasons given for the rule not permitting predication of fraud on promises that are merely unkept subsequently are that a mere promise to perform an act in the future is not, in a legal sense, a representation<sup>7</sup> or statement of existing or past fact,<sup>8</sup> and a person has no right to rely on such a promise or statement.<sup>9</sup> A mere failure to perform a promise does not change its character.<sup>10</sup> Moreover, a representation that something will be done in the future,<sup>11</sup> or a promise to do it,<sup>12</sup> cannot, from its nature, be true or false at the time when it is made. The failure to make it good is merely a breach of contract, which must be remedied by an action on the contract, if at all.<sup>13</sup>

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Footnotes

<sup>1</sup> §§ 89 to 92.

<sup>2</sup> *Hart v. Bayer Corp.*, 199 F.3d 239 (5th Cir. 2000) (applying Mississippi law); *Cook v. Little Caesar Enterprises, Inc.*, 210 F.3d 653, 2000 FED App. 0147P (6th Cir. 2000) (applying Michigan law); *Trade Finance Partners, LLC v. AAR Corp.*, 573 F.3d 401 (7th Cir. 2009) (applying New York law); *Futch v. Lowndes County*, 297 Ga. App. 308, 676 S.E.2d 892 (2009); *Ira G. Steffy & Son, Inc. v. Citizens Bank of Pennsylvania*, 2010 PA Super 175, 7 A.3d 278 (2010), appeal denied, 27 A.3d 1015 (Pa. 2011); *Supervalu, Inc. v. Johnson*, 276 Va. 356, 666 S.E.2d 335 (2008).

<sup>3</sup> *OHM Remediation Services Corp. v. Hughes Environmental Systems, Inc.*, 952 F. Supp. 120 (N.D. N.Y. 1997) (applying New York law); *Yield Dynamics, Inc. v. TEA Systems Corp.*, 154 Cal. App. 4th 547, 66 Cal. Rptr. 3d 1 (6th Dist. 2007), as modified on denial of reh'g, (Sept. 21, 2007); *Adams v. G.J. Creel and Sons, Inc.*, 320 S.C. 274, 465 S.E.2d 84 (1995); *Kajima Intern., Inc. v. Formosa Plastics Corp., USA*, 15 S.W.3d 289 (Tex. App. Corpus Christi 2000) (noting that otherwise, every breach of contract would amount to fraud).

<sup>4</sup> *Citizens Nat. Bank of Glasgow v. Damron*, 286 Ky. 43, 149 S.W.2d 762 (1941); *Howard v. Reaume*, 310 Mich. 119, 16 N.W.2d 686 (1944); *Farmers Union Co-op. Royalty Co. v. Southward*, 1938 OK 237, 183 Okla. 402, 82 P.2d 819 (1938).

<sup>5</sup> *Mario's Pizzeria, Inc. v. Federal Sign & Signal Corp.*, 379 S.W.2d 736 (Ky. 1964); *Credit Indus. Co. v. Adams County Lumber & Supply Co.*, 215 Miss. 282, 60 So. 2d 790 (1952); *Alms & Doepe Co. v. Young*, 20 Ohio L. Abs. 325, 1935 WL 1910 (Ct. App. 1st Dist. Hamilton County 1935).

<sup>6</sup> § 490.

<sup>7</sup> *Howard v. Reaume*, 310 Mich. 119, 16 N.W.2d 686 (1944); *Blow v. Indemnity Ins. Co. of North America*, 66 S.W.2d 469 (Tex. Civ. App. Beaumont 1933).

<sup>8</sup> *Citizens Nat. Bank of Glasgow v. Damron*, 286 Ky. 43, 149 S.W.2d 762 (1941).

<sup>9</sup> § 252.

<sup>10</sup> *Credit Indus. Co. v. Adams County Lumber & Supply Co.*, 215 Miss. 282, 60 So. 2d 790 (1952).

<sup>11</sup> *Colorado Milling & Elevator Co. v. Rapides Grocery Co.*, 142 So. 626 (La. Ct. App. 2d Cir. 1932); *Alms & Doepe Co. v. Young*, 20 Ohio L. Abs. 325, 1935 WL 1910 (Ct. App. 1st Dist. Hamilton County 1935).

<sup>12</sup> *Turner Elkhorn Coal Co. v. Smith*, 239 Ky. 428, 39 S.W.2d 649 (1931); *Soble v. Herman*, 175 Va. 489, 9 S.E.2d 459 (1940).

<sup>13</sup> *Tom Hughes Marine, Inc. v. American Honda Motor Co., Inc.*, 219 F.3d 321 (4th Cir. 2000) (applying South Carolina law); *Appel v. Hupfield*, 198 Md. 374, 84 A.2d 94 (1951).